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No. 06-1122

Supreme Court, U.S.
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In The Supreme Court of the United States

SEMINOLE ENTERTAINMENT, INC.,
d/b/a RACHEL'S GENTLEMEN'S CLUB,

Petitioner,

vs.

CITY OF CASSELBERRY, FLORIDA,

Respondent.

On Petition For A Writ Of Certiorari To The Florida District Court Of Appeal For The Fifth District

BRIEF OF RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether Florida's Fifth District Court of Appeal properly affirmed, per curiam without opinion, the trial court's primary ruling that Rachel's claims are procedurally barred and the trial court's alternative ruling that the licensing regulations in Casselberry's adult entertainment code do not violate the First and Fourteenth Amendments because they further a substantial government interest, and are not aimed at suppressing expressive conduct but rather are aimed at penalizing and terminating unlawful conduct?

PARTIES TO THE PROCEEDING

The parties listed in the caption, Seminole Entertainment, Inc., d/b/a Rachel's Gentlemen's Club, and City of Casselberry, Florida, are the only parties to this proceeding.

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STATEMENT OF JURISDICTION

Seminole Entertainment, Inc., d/b/a Rachel's Gentlemen's Club ("Rachel's") asserts the jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The City of Casselberry, Florida ("Casselberry" or "City") respectfully contends that section 1254(1) does not provide a basis for this Court's jurisdiction over this matter because Rachel's does not seek a writ of certiorari directed to one of the federal circuit courts of appeals. Rachel's seeks a writ of certiorari directed to the Florida Fifth District Court of Appeal, and therefore, jurisdiction in this Court, if it exists, would be under 28 U.S.C. § 1257(a).

STATEMENT OF THE CASE

A. History of the Litigation Between Rachel's and Casselberry

Rachel's was licensed to operate in the City of Casselberry as an adult entertainment establishment, featuring striptease/erotic dancing. This case is one in a series of lawsuits filed by Rachel's against Casselberry, in which Rachel's has challenged the January 31, 2001, suspension of its adult entertainment license and the ordinances upon which said suspension was based.

Contrary to Rachel's assertion, the City never sought to "rid itself" of Rachel's and close it down. The City did, however, wish to "rid itself" of prostitution and other prohibited sexual activity, lewd activity, and drug use and sales. To that end, during a lengthy undercover investigation by the Sheriff's Office of Seminole County, Florida, and the City/County Investigative Bureau, law enforcement agents obtained evidence that the management of

Rachel's was permitting prostitution and other prohibited sexual activity, lewd activity, and drug sales and use to occur on its premises. As a result of this evidence, several arrests were made.

Additionally, Casselberry served Rachel's with a notice of intent to revoke its adult entertainment license, based upon alleged violations of Section 14-92 of the Casselberry City Code. A revocation hearing was subsequently held in accordance with the provisions of Section 14-93 of the Casselberry City Code.[1] Based upon the evidence of illegal and prohibited activity that had been occurring on the Rachel's premises that was established at the revocation hearing, the Casselberry City Commission suspended Rachel's adult entertainment license for a period of two years, effective February 1, 2001.

Importantly, the license suspension did not close Rachel's; it simply suspended Rachel's license to operate as an adult entertainment establishment. The suspension did not in any way affect Rachel's liquor license, and therefore, Rachel's was free to remain open as a liquor lounge. Additionally, Rachel's remained free to operate as a restaurant. Moreover, Rachel's could have scantily clad women, wearing attire such as suggestive cocktail dresses, serve patrons so long as the women's dress (or lack thereof) and conduct was not the type of conduct for which an adult entertainment license was mandated. Rachel's simply could not offer entertainment such as near nude dancing for tips or other direct remuneration, or near nude

[1] Sections 14-92 and 14-93 of the Casselberry City Code are collectively referred to herein as Casselberry's "adult entertainment code."

performances or display of "specified anatomical areas" as defined in the adult entertainment code. In short, Rachel's remained completely free to operate as a "high class," Hooters-style restaurant and lounge.

Rachel's was apparently not content with the broad range of ways in which it could continue to lawfully operate during the suspension of its adult entertainment license, and therefore, began its series of attacks upon the suspension of its adult entertainment license and the ordinance upon which said suspension was based in state circuit court (trial court) and in federal court. In state circuit court, Rachel's filed an action for declaratory judgment and permanent injunction ("injunction action"); that is the case giving rise to the Petition for a Writ of Certiorari that is presently before this Court. The specifics of Rachel's claims in this action will be set forth below. Additionally, one month after filing this lawsuit, Rachel's filed a petition for writ of certiorari in state circuit court, seeking certiorari review of the administrative suspension of its adult entertainment license ("certiorari action").[2] *See Seminole Entertainment, Inc. v. City of Casselberry*, No. 01-23-AP (Fla. 18th Cir. Ct.). In both actions, Rachel's alleged its constitutional rights had been violated.

In this case, Rachel's moved for a temporary injunction enjoining the enforcement of the suspension order. That motion was denied, and Rachel's appealed to the Florida Fifth District Court of Appeal. The Fifth District Court reversed the denial of the motion for temporary

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[2] *See Dusseau v. Metropolitan Dade County Bd. of County Comm'rs*, 794 So. 2d 1270, 1273-74 (Fla. 2001) and *Deerfield Beach v. Valliant*, 419 So. 2d 624-25 (Fla. 1982) for a discussion of certiorari review of administrative decisions in Florida.

injunction with directions to the circuit court to enter the temporary injunction. *See Seminole Entertainment, Inc. v. City of Casselberry*, 811 So. 2d 693 (Fla. 5th DCA 2001) ("*Rachel's I*").

With the temporary injunction in place enjoining the enforcement of the suspension order, the certiorari action was resolved with the circuit court issuing an order denying Rachel's petition for writ of certiorari, thereby concluding that Rachel's had received procedural due process, the essential requirements of law had been observed, and the findings and judgment of the Casselberry City Commission were supported by competent substantial evidence. Rachel's then sought second-tier certiorari review of that decision in the Florida Fifth District Court of Appeal. *See Seminole Entertainment, Inc. v. City of Casselberry*, 813 So. 2d 186 (Fla. 5th DCA 2002) ("*Rachel's II*"). The Florida Fifth District Court denied Rachel's petition for writ of certiorari, finding that procedural due process had been afforded to Rachel's and that the essential requirements of law had been observed. *Id.* In its opinion denying Rachel's relief, the Fifth District Court also ordered that the temporary injunction entered pursuant to the *Rachel's I* decision expired automatically with the issuance of the opinion denying certiorari relief. *See id.* Rachel's efforts to obtain further review in the Florida Supreme Court and in this Court were both unsuccessful. *See Seminole Entertainment, Inc. v. City of Casselberry*, 835 So. 2d 269 (Fla. 2002); *Seminole Entertainment, Inc. v. City of Casselberry, Fla.*, 539 U.S. 915, 123 S. Ct. 2276, 156 L. Ed. 2d 130 (2003).

Thus, contrary to Rachel's attempts in its Petition for a Writ of Certiorari to paint the investigation and subsequent revocation proceedings as improper, biased, and

tainted by a secret love affair, it has been conclusively determined that Rachel's was afforded procedural due process throughout the administrative proceedings. *See Seminole Entertainment, Inc. v. City of Casselberry, Fla.*, 813 So. 2d 186, 189 (Fla. 5th DCA 2002), *review denied*, 835 So. 2d 269 (Fla. 2002), *cert. denied*, 539 U.S. 915, 123 S. Ct. 2276, 156 L. Ed. 2d 130 (2003). Rachel's resurrection of those arguments is improper because those matters were all definitively decided against Rachel's, and are not subject to further consideration.

The circuit court subsequently resolved this injunction action by entering summary judgment in favor of Casselberry, on the basis that res judicata precluded Rachel's from again raising its constitutional challenges. Rachel's appealed that decision to Florida's Fifth District Court of Appeal. *See Seminole Entertainment, Inc. v. City of Casselberry*, 866 So. 2d 1242 (Fla. 5th DCA 2004) (*"Rachel's III"*). The Florida Fifth District Court affirmed in part and reversed in part. *See id.* The relevant details of said opinion and the further activity in this case will be set forth below.

While all of this activity was ongoing in state court, Rachel's and one of its dancers, Pauline Koziara, prosecuted an action for declaratory judgment and injunction in the District Court of the United States for the Middle District of Florida. *See Koziara v. City of Casselberry*, 239 F. Supp. 2d 1245 (M.D. Fla. 2002). In that case, Rachel's and Koziara asserted claims pursuant to 42 U.S.C. § 1983 for alleged violations of their rights under the First, Fifth, and Fourteenth Amendments to the United States Constitution. *See id.* Rachel's efforts in that arena failed, too, with the federal district court granting Casselberry's motion for summary judgment on Rachel's claims on the

basis that said claims are barred by res judicata.[3] *See Koziara*, 239 F. Supp. 2d 1245. The Middle District Court concluded:

> Although Rachel's had the option of litigating all or part of its claims in federal court, state court, or both, Rachel's must have articulated its intentions from the outset. A plaintiff is not guaranteed . . . a right to proceed to judgment in state court on its state claims and then turn to federal court for adjudication of its federal claims. In order to preserve a litigant's right to a federal forum, a litigant should (1) first file in federal court; (2) seek a stay from the federal court to allow the state courts to consider any state law questions; and (3) inform the state court that he or she intends to pursue any federal constitutional claims in federal court following the conclusion of the state court proceedings. Failure to do so, eliminates the opportunity to present such federal claims in a federal forum. Res judicata bars the filing of claims which were raised or could have been raised in an earlier proceeding. Moreover, a plaintiff cannot wait until it receives an unfavorable decision in state court and then adjudicate its claims in federal court. Florida law is clear that the rule against splitting causes of action makes it incumbent upon plaintiffs to raise all available claims involving the same circumstances in one action. Accordingly, the

[3] Koziara lost her case, as well, with the district court subsequently concluding that she did not have standing to raise her claims. *Koziara v. City of Casselberry*, 347 F. Supp. 2d 1223 (M.D. Fla. 2003). Koziara appealed to the Eleventh Circuit Court of Appeals, but was unsuccessful. *Koziara v. City of Casselberry*, 392 F.3d 1302 (11th Cir. 2004).

> doctrine of res judicata bars Rachel's claims and summary judgment is appropriate.

Id. at 1258 (internal citations and quotation marks omitted). Rachel's did not appeal that ruling, and therefore, the federal district court's assessment that Rachel's federal claims are barred by res judicata stands.

B. Details of the Case *Sub Judice*

In the case at bar, Rachel's originally filed suit seeking: (1) a judgment declaring that Sections 14-92 and 14-93 of the Casselberry City Code and Casselberry's suspension of Rachel's adult entertainment license are unconstitutional under "applicable law, including Article I, Sections 2, 4, and 9 of the Florida Constitution"; and (2) a permanent injunction (a) enjoining Casselberry and its agents from enforcing either Casselberry's adult entertainment code or Casselberry's order revoking Rachel's adult entertainment license, and (b) vacating Casselberry's order revoking Rachel's adult entertainment license or directing Casselberry to vacate its order revoking Rachel's adult entertainment license. As stated above, summary judgment was entered in favor of Casselberry, on the basis that Rachel's claims are barred by the doctrine of *res judicata*.

Rachel's appealed from that order. The Florida Fifth District Court of Appeal reversed, finding:

> [A]mong the myriad constitutional complaints Rachel's has asserted in the action below, there are a few that it chose not to assert in *Rachel's II*. Based on our review, this appears to include the claims in paragraphs 29-32 and 40 of the complaint. Accordingly, these constitutional claims are not barred by the prior litigation and to that

> extent, the trial court erred in entering a summary judgment on them.

Rachel's III, 866 So. 2d at 1245.[4] Rachel's and Casselberry both sought certiorari review of said decision in the Florida Supreme Court; both petitions for review were denied.

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[4] The claims in paragraphs 29-32 and 40 of the Complaint, to which the Florida Fifth District Court referred, are as follows:

> 29. The revocation order issued by the City is a content-based order in violation of Article I, Section 4 of the Florida Constitution.
>
> 30. The revocation procedure established by the Casselberry Code of Ordinances violates Seminole Entertainment's rights to due process and equal protection under Article I, Sections 2 and 9 of the Florida Constitution in that there are no criteria established upon which the City Commission is to base its decision or conduct the hearing. There are no established rules of procedure or evidence for the hearing in question. Further, Sections 14-92 and 14-93 violate equal protection, specifically Article I, Section 2 of the Florida Constitution in that there is no lawful basis justifying differentiating between adult entertainment and non-adult entertainment businesses.
>
> 31. The revocation order does not further a substantial government interest and does not constitute the least-restrictive means to achieve the City's goal, and thus same violates Article I, Sections 4 and 9 of the Florida Constitution and Florida law.
>
> 32. The revocation order constitutes a taking without just compensation in violation of Article X, Section 6 and Article I, Section 9 of the Florida Constitution.
>
> . . . .
>
> 40. The definition of "violation" as set forth within Section 14-92 is unconstitutionally vague in violation of Article I, Section 9 of the Florida Constitution. Further, the definition of "violation" denies substantive due process in that it does not require a criminal conviction, court process or adjudication in order for the City to revoke an adult entertainment license.

See Seminole Entertainment, Inc. v. City of Casselberry, 880 So. 2d 1212 (Fla. 2004); *City of Casselberry v. Seminole Entertainment, Inc.*, 880 So. 2d 1210 (Fla. 2004). Hence, the case returned to the trial court.

On remand, Rachel's moved to amend its Complaint. Over Casselberry's objection, Rachel's motion to amend was granted. In its "First Amended Civil Rights Complaint for Declaratory Judgment, Permanent Injunction, Damages, Attorney's Fees and Costs" ("Amended Complaint"), for reasons only Rachel's can comprehend, Rachel's abandoned the claims under state law that had been specifically remanded by the Fifth District Court of Appeal, and instead, asserted that certain provisions of Sections 14-92 and 14-93, as well as the revocation proceedings and order which resulted therefrom, are unconstitutional under the United States Constitution. Specifically, Rachel's alleged violations of its First, Fifth, and Fourteenth Amendment rights under the United States Constitution. Additionally, Rachel's asked the circuit court to issue a judgment declaring that Sections 14-92, 14-93, and 14-66 of the Casselberry Adult Entertainment Code are unconstitutional under the United States Constitution, and that the suspension of Rachel's license was unconstitutional under the First, Fifth, and Fourteenth Amendments. Further, Rachel's asked the circuit court to issue a permanent injunction enjoining the enforcement of Sections 14-92, 14-93, and 14-66 of Casselberry's Adult Entertainment Code. Lastly, Rachel's sought an award of attorney's fees and costs pursuant to 42 U.S.C. §§ 1983 and 1988. Interestingly, Rachel's was attempting to use the state court to litigate federal claims, after the Florida Middle District Court had previously told Rachel's it was procedurally barred from bringing an action in federal court regarding

this matter. *See Koziara v. City of Casselberry*, 239 F. Supp. 2d 1245 (M.D. 2002).

Rachel's and Casselberry filed cross-motions for summary judgment. Following a hearing, the trial court entered final summary judgment in favor of Casselberry. The trial court ruled that Rachel's claims are procedurally barred, and *alternatively*, rejected Rachel's constitutional challenges in their entirety. Specifically, the trial court stated:

> In the event that the summary judgment awarded on procedural grounds is found to be erroneous, to preserve judicial resources, this Court will also consider the separate motions on their merits. The below analysis is an independent and alternative ruling which would be made if the appellate court was inclined to reverse and remand this summary judgment.

See Petition Appendix B, p. 5a. Rachel's appealed to Florida's Fifth District Court of Appeal. The Fifth District Court of Appeal affirmed, per curiam, without issuing a written opinion. *See Seminole Entertainment, Inc. v. City of Casselberry*, 942 So. 2d 898 (Fla. 5th DCA 2006). The Fifth District Court's per curiam decision without written opinion barred Rachel's from seeking review in the Florida Supreme Court. *See Stallworth v. Moore*, 827 So. 2d 974, 978 (Fla. 2002) (Florida Supreme Court "does not have discretionary review jurisdiction or extraordinary writ jurisdiction to review per curiam denials of relief, issued without opinion or explanation, whether they be in opinion form or by way of unpublished order."); Fla. R. App. P. 9.030(a). Rachel's now requests that this Court accept jurisdiction over this matter.

ARGUMENTS FOR DENYING THE PETITION

Undaunted by six years of unsuccessful litigation in state and federal trial and appellate courts over the suspension of its adult entertainment license and the ordinances upon which said suspension was based, Rachel's now asks this Court to accept certiorari jurisdiction over this matter to review a per curiam affirmed decision of the Florida Fifth District Court of Appeal. In doing so, Rachel's completely disregards the undisputable fact that the Fifth District Court's decision affirmed an order of the trial court that was based on procedural grounds rather than the determination of a federal question.

Rachel's ignores the procedural roadblock with which it is faced and argues that as a matter of due process and First Amendment jurisprudence, a property right, such as a license, cannot be suspended based upon a theory of strict liability or respondeat superior. Rachel's contends that an owner's knowledge of wrongful activity or culpable conduct must be established. Rachel's simply has not established a basis upon which this Court can, or should, exercise jurisdiction over this matter, and therefore, its Petition for a Writ of Certiorari should be denied.

I. This Case Does Not Present a Federal Question for This Court's Review.

It is indisputable that this Court's "principal responsibility under current practice" and a "primary basis for the Constitution's allowing [the Court] to review state court decisions, . . . is to ensure the integrity and uniformity of federal law." *Kansas v. Marsh*, ___ U.S. ___, 126 S. Ct. 2516, 2530, 165 L. Ed. 2d 429 (2006) (Scalia, J., concurring) (citations omitted). This Court must "resolve

conflicts among the United States courts of appeals and state courts concerning the meaning of provisions of federal law." *Braxton v. U.S.*, 500 U.S. 344, 348, 111 S. Ct. 1854, 1857, 114 L. Ed. 2d 385 (1991).

The decision that Rachel's asks this Court to review is a per curiam affirmed decision, which does not provide any discussion or citation to case law. The decision does not provide any basis whatsoever upon which one could definitely conclude whether the Fifth District Court found, as the trial court had, that Rachel's federal claims are procedurally barred, or whether the court considered Rachel's federal claims and rejected them. Rachel's asserts:

> Here, one would think that the Florida intermediate appellate court ruled against Rachel's on the merits of its case finding the code constitutional. Had this not been the case, the court would have explained at least in a cursory fashion how the case was procedurally barred (if that were the court's intent).

(Petition, p. 14). Furthermore, Rachel's uses discussion that occurred at oral argument before the Fifth District Court to support its assertion that the Fifth District Court considered and rejected Rachel's federal claims. *See* Petition, pp. 8-9.

Under Florida law, the principle guiding the appellate courts is that they do not reach constitutional questions unless they are required to do so in order to decide a lawsuit. *See, e.g., The Florida Bar v. Gold,* 937 So. 2d 652, 655 (Fla. 2006) ("When a case may be resolved on grounds other than constitutional grounds, the Court will ordinarily refrain from proceeding to decide the constitutional

question."); *Singletary v. State,* 322 So. 2d 551, 552 (Fla. 1975) ("[W]e adhere to the settled principle of constitutional law that courts should not pass upon the constitutionality of statutes if the case in which the question arises may be effectively disposed of on other grounds."); *Gaudet v. Florida Bd. of Prof. Engineers*, 900 So. 2d 574, 581 (Fla. 4th DCA 2004) (a court will not decide constitutional questions if an issue can be determined on any other grounds).

In this case, the trial court very clearly articulated that Rachel's claims were procedurally barred. The trial court only addressed the merits of Rachel's claims "as an independent and alternative ruling which would be made if the appellate court was inclined to reverse and remand the summary judgment." (Petition Appendix B, p. 5a). Accordingly, contrary to Rachel's assertion, there is a presumption that the Fifth District Court did not reach the federal question in order to decide this case because it could effectively dispose of the case on procedural grounds. *See Gold,* 937 So. 2d at 655; *Singletary,* 322 So. 2d at 552; *Gaudet*, 900 So. 2d at 581.

Without a basis upon which to conclude that the Fifth District Court decided any federal question, and that its decision of that federal question conflicts with the decision of another state court of last resort or of a United States court of appeals, this Court should conclude that it has no jurisdiction over this matter. *See id.; Illinois v. Gates*, 462 U.S. 213, 103 S. Ct. 2317, 76 L. Ed. 2d 527, *reh'g denied,* 463 U.S. 1237, 104 S. Ct. 33, 77 L. Ed. 2d 1453 (1983) (If both requirements that a federal question has been raised *and decided* in the state court below do not appear on the record, the appellate jurisdiction of the Supreme Court fails.); *New York Times Co. v. Jascalevich*, 439 U.S. 1317,

1318, 99 S. Ct. 6, 8, 58 L. Ed. 2d 25 (1978) ("[I]t is only final judgments with respect to issues of federal law that provide the basis for our appellate jurisdiction with respect to state-court cases."); Sup. Ct. R. 10 (Supreme Court may exercise jurisdiction over cases where "a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals.").

II. Remand to the Fifth District Court of Appeal for Clarification of Its Decision Would Be Improper.

Rachel's asserts "[i]f there is any question about whether the lower court reached the 'federal' merits, then this case should be remanded to the appellate court to explain its reasoning affirming the final judgment herein." Petition, p. 14. This request is a disguised attempt to obtain what in effect would be a writ of mandamus compelling the Fifth District Court of Appeal to issue a written opinion in this case. In Florida, there is no right to have an appellate court issue a written opinion explaining the basis for its decision on an appeal. *See Whipple v. State*, 431 So. 2d 1011 (Fla. 2d DCA 1983). The Fifth District Court of Appeal has exercised its right to decline to issue a written opinion and that decision should be left undisturbed.

One of the cases cited by Rachel's in support of its request that this Court remand this matter to the Fifth District Court for the court to explain the reason behind its affirmance of the final judgment herein actually provides support for the conclusion that a remand in this case would be wholly inappropriate. As this Court explained in

Michigan v. Long, 463 U.S. 1032, 1040-41, 103 S. Ct. 3469, 3476-77, 77 L. Ed. 2d 1201 (1983):

> Respect for the independence of state courts, as well as avoidance of rendering advisory opinions, have been the cornerstones of this Court's refusal to decide cases where there is an adequate and independent state ground. It is precisely because of this respect for state courts, and this desire to avoid advisory opinions, that we do not wish to continue to decide issues of state law that go beyond the opinion that we review, or to require state courts to reconsider cases to clarify the grounds of their decisions.

Id. The Court noted, however, in the footnote cited by Rachel's, that "[t]here may be certain circumstances in which clarification is necessary or desirable, and we will not be foreclosed from taking the appropriate action." *Long*, 463 U.S. at 1040-41, 103 S. Ct. at 3476-77.

As discussed above, the trial court decided this case on procedural grounds. The Fifth District Court of Appeal affirmed that decision. Regardless of any discussion that occurred at oral argument, it is presumed that the Fifth District Court did not reach the federal question in order to decide this case because it could effectively dispose of the case on procedural grounds. *See Gold,* 937 So. 2d at 655; *Singletary,* 322 So. 2d at 552; *Gaudet*, 900 So. 2d at 581. Accordingly, it is not necessary or desirable for this Court to remand this matter to the Fifth District Court of Appeal for clarification of its decision.

III. Casselberry's Adult Entertainment Code Is Not an Impermissible Strict Liability Code.

Instead of explaining why this case is one which this Court should accept for certiorari review, Rachel's "Reason for Granting the Writ" focuses on the merits of Rachel's argument on appeal and contends that Casselberry's adult entertainment code constitutes a "strict liability" code which authorizes the suspension of a license based upon a theory of strict liability or respondeat superior.

Rachel's ignores the fact that in Florida, a licensee can be inferred to have knowledge of illegal activities occurring at his or her business if the facts establish that the violations of law were "fostered, condoned or negligently overlooked" by said licensee, notwithstanding the licensee's absence from the business premises on the dates on which the illegal activities occurred. *See, e.g., Pic N' Save Central Florida, Inc. v. Dept. of Business Reg., Div. of Alcoholic Beverages and Tobacco*, 601 So. 2d 245 (Fla. 1st DCA 1992); *Pauline v. Lee*, 147 So. 2d 359 (Fla. 2d DCA 1962). *See also Golden Dolphin No. 2, Inc. v. State*, 403 So. 2d 1372 (Fla. 5th DCA 1981) (customer's testimony that he had witnessed licensee's employees committing certain violations on several occasions prior to occasion on which license suspension was based was sufficient to support finding that licensee had knowledge of the violative activity); *G & B of Jacksonville, Inc. v. State*, 371 So. 2d 139 (Fla. 1st DCA 1979) (persistent and practiced manner in which violations were executed supported conclusion that licensee either condoned or negligently overlooked the illegal activities); *Lash, Inc. v. State, Dep't of Bus. Reg.*, 411 So. 2d 276 (Fla. 3d DCA 1982) (license revocation upheld where evidence established that on five occasions

over period of one week, undercover beverage agents purchased controlled substances from two of licensee's employees). Thus, in Florida, a license may be revoked lawfully when there is evidence presented that violations of the law were either fostered, condoned, or negligently overlooked by the licensee.

Additionally, under federal law, a license may be suspended as a consequence for r.io bad acts. *Arcara v. Cloud Books, Inc.*, 478 U.S. 697, 707 (1986).

Casselberry's adult entertainment code complies with these and other relevant authorities. Casselberry reserves its right to further explain in its responsive brief that will be filed if this Court grants Rachel's Petition for a Writ of Certiorari and schedules this matter for briefing and oral argument, why Rachel's argument should be rejected and why this Court should uphold Casselberry's adult entertainment code.

CONCLUSION

For the foregoing reasons, the City of Casselberry respectfully requests that this Honorable Court deny the Petition for a Writ of Certiorari.

Respectfully submitted,

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